

Memorandum 95-3

Uniform Prudent Investor Act: Comments of California Bankers Association

At the November meeting, following consideration of comments received from the State Bar, the Commission approved the draft recommendation on the Uniform Prudent Investor Act for printing and introduction as a bill in the 1995 legislative session. The recommendation was believed to be in good shape, since it was largely the same as the official text of the Uniform Prudent Investor Act recently approved by the National Conference of Commissioners on Uniform State Laws. The uniform act went through a stringent consideration and approval process in the course of its preparation, including review and approval by the American Bar Association and the American Bankers Association. (As to the latter, see the attached letter from James D. McLaughlin to John H. Langbein.)

Also at the November meeting, the Commission had before it a letter from the California Bankers Association stating that "although we support the general concept of the proposal, we may have significant concerns about, and objections to, specific provisions in the draft." (See letter from David W. Lauer, Oct. 18, 1994, Memorandum 94-55, Exhibit p. 4.) A followup letter from Mr. Lauer indicating deeper concerns was received after the November meeting. (See copy attached as Exhibit pp. 1-2.)

The Commission has not yet received final written comments from CBA. We have had several discussions by conference call with CBA representatives since mid-December. We received an informal list of 19 concerns and questions and responded to them. We are now attempting to set up a meeting of the interested parties, which we hope will include State Bar representatives and Professor Ed Halbach (Reporter for the Restatement (Third) of Trusts and Commission consultant). The staff is hopeful that nearly all of the technical questions can be resolved, but there appear to be two or three policy issues troubling the CBA representatives that will require Commission resolution.

We have not yet received the letter from CBA indicating their current general position. We will distribute it at the January meeting, if we get it.

In conclusion, the staff has little to report except that the process is continuing. The staff recommends that the Commission continue with this project, print the recommendation, and obtain introduction of a bill to implement the recommendation. The bill can be amended to deal with the CBA concerns or any other problems as they arise.

Respectfully submitted,

Stan Ulrich
Assistant Executive Secretary



DAVID W. LAUER
Vice President and
Senior Counsel
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DATE: NOV 28 1994

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File: L-647

November 28, 1994

Mr. Stan Ulrich
Assistant Executive Secretary
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

RE: Uniform Prudent Investor Rule: Tentative Recommendation of the California Law Revision Commission

Dear Stan:

The members of the California Bankers Association State Governmental Affairs Committee have carefully reviewed the Tentative Recommendation dated September 8, 1994.

After a full discussion of the matter, the Committee has concluded that it will not be able to support the Tentative Recommendation. The Committee believes that the existing California Trust Law reflects most of the concepts embodied in the Uniform Prudent Investor Act and the Tentative Recommendation. The proposed changes to numerous sections of the Trust Law may introduce uncertainty and inconsistencies. Therefore, the Committee believes it is unwise to make these changes.

However, the Committee recognizes that certain changes consistent with some of the concepts contained in the Tentative Recommendation may be appropriate if they are incorporated by amending specific sections of the existing Trust Law. For example, a change in the area of delegation of fiduciary responsibilities would be appropriate since California's present statutory treatment of this area contains a bias against delegation which has been significantly liberalized by the Restatement, Third and the Uniform Prudent Investor Act. However, these changes could be accomplished by merely suggesting amendments to Probate Code §§ 16012, 16013, 16401 and 16402, rather than the wholesale changes envisioned by the Tentative Recommendation.

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Mr. Stan Ulrich
November 28, 1994
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Thank you for providing us with the opportunity to comment on your recommendation. I look forward to reviewing the matter further with you in the near future and will be contacting you within the next few days to arrange a meeting or telephone conference.

Sincerely,

A handwritten signature in cursive script that reads "David".

David W. Lauer

DWL/oas

cc: Maureen Padden



JAMES D. McLAUGHLIN
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July 20, 1994

Mr. John H. Langbein
Chancellor Kent Professor of Law
and Legal History
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New Haven, Connecticut 06520-8215

Dear John:

I'm sorry to be so long in responding to your May 24 letter but I've been off on a number of trips and was waiting to hear from the members of our committee to whom I had circulated the final draft of the proposed Uniform Prudent Investor Act.

The response to the proposal was just as I reported to you in our conversation. Bank trust officers and their in-house attorneys have been a part of the process throughout the draft's development. Their involvement has taken place primarily as a result of bankers' participation in the National Conference of Lawyers and Corporate Fiduciaries. I don't know how much you know about that low profile but most important group. It serves a mechanism of communication, coordination and sharing of information and view-points on all matters of fiduciary law, tax and administration.

Rich Lyon, Vice President and Senior Counsel of Union Bank, San Francisco, a banker member of the National Conference, has led the banker review effort and, in general, they thought the drafting group had done an excellent job on this important project. This message had been communicated as to earlier versions and the very minor changes made to the comments in this final draft do not change our views.

I hope you will let us know when the draft is finally approved and ready for promulgation to the states. We will be pleased to provide information through the Trust Letter. Perhaps you or one of your colleagues might be willing to prepare a brief article?

Sincerely,

James D. McLaughlin